

MANDENI MUNICIPALITY: CREDIT CONTROL AND DEBT COLLECTION BY-LAW, 2016



Adopted by Council on the:

Promulgated on:

CREDIT CONTROL AND DEBT COLLECTION BY-LAW, 2016

To provide for the debt control and the collection of all money due and payable to the Municipality; to provide for the repeal of laws and savings; and to provide for matters incidental thereto.

PREAMBLE

WHEREAS the Municipality is entitled in terms of section 229 of the Constitution of the Republic of South Africa, 1996, to impose rates on property and surcharges on fees for services provided by or on its behalf within its area of jurisdiction;

WHEREAS the Municipality is entitled in terms of section 75A of the Local Government: Municipal Systems Act, No. 32 of 2000 to levy and recover fees, charges or tariffs in respect of any function or service of the Municipality and to recover collection charges and interest on any outstanding amount;

WHEREAS the Municipality is obliged in terms of section 96 of the Systems Act to collect all money that is due and payable to it, subject to the provisions of that Act and any other applicable legislation;

AND WHEREAS the Municipality is obliged in terms of section 98 of the Systems Act to adopt By-laws to give effect to the Municipality's credit control and debt collection policy, its implementation and enforcement;

NOW THEREFORE the municipal council of the Mandeni Local Municipality, acting in terms of section 156 read with Schedule 4 (Part B) and Schedule 5 (Part B) of the Constitution, and read with section 98 and 11 of the Systems Act, hereby makes the following By-law:

TABLE OF CONTENTS

CHAPTER 1 INTERPRETATION

1. Definitions
2. Interpretation of By-law
3. Objects of By-law
4. Application of By-law

CHAPTER 2 REQUIREMENTS FOR THE PROVISION OF MUNICIPAL SERVICES

5. Registration for provision of municipal services
6. Deposits
7. Service agreement between the Municipality and a customer
8. Measurement of consumption
9. Review of existing service agreements
10. Termination of service agreements
11. Notices of compliance

CHAPTER 3

ACCOUNT ADMINISTRATION

- 12. Accounts
- 13. Account information
- 14. Account administration and monitoring
- 15. Responsibility for payment of account
- 16. Disputes and enquiries in respect of accounts rendered by the Municipality
- 17. Failure to pay accounts on due date
- 18. Rates and municipal service charges upon the property
- 19. Termination or restriction of a municipal service
- 20. Reinstatement of the supply of a municipal service
- 21. Interest charges
- 22. Administration charges
- 23. Municipality's discretion in appropriation of payments received
- 24. Actions for the recovery of outstanding amounts
- 25. Agreement with employer
- 26. Acknowledgements of debt

CHAPTER 4

ASSISTANCE TO THE POOR AND IRRECOVERABLE DEBTS

- 27. Assistance to the poor
- 28. Irrecoverable debts

CHAPTER 5
MISCELLANEOUS

- 29. Municipality's right of access to premises
- 30. Transmission of documents
- 31. *Prima facie* evidence of documentation
- 32. Update of customer details

CHAPTER 6
PROCUREMENT OF GOODS AND SERVICES BY THE MUNICIPALITY

- 33. Procurement of goods and services by the Municipality

CHAPTER 7
GENERAL

- 34. Appeals
- 35. Offences and penalties
- 36. Delegations
- 37. Repeal of laws and savings
- 38. Short title and commencement

SCHEDULE
BY-LAW REPEALED

CHAPTER 1

INTERPRETATION

Definitions

1. In this By-law, unless the context indicates otherwise–

"Account" means written notification in the form of a statement of account in respect of municipal services, rates, sundry and other charges, addressed to a person liable for payment thereof;

"Agent" means a person authorised by the customer to act on his or her behalf;

"Authorised official" means a person authorised to implement the provisions of this By-law, including but not limited to–

(a) peace officers as contemplated in section 334 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

(b) municipal Police Officers as contemplated in the South African Police Services Act, 1995 (Act No. 68 of 1995); and

(c) such employees, agents, delegated nominees, representatives and service providers of the Municipality: Provided that for the purposes of search and seizure, where such person is not a peace officer, such person must be accompanied by a peace officer;

"Bulk customer" means a customer who consumes large amounts of electricity for commercial or industrial purposes;

"CFO" means a person employed by the Municipality in terms of section 57 of the Systems Act as the Chief Financial Officer of the Municipality, and includes any person to whom the Chief Financial Officer has delegated or sub-delegated a power, function or duty in accordance with the system of delegation developed by the municipal manager in terms of section 79 of the Municipal Finance Management Act and section 59 of the Systems Act;

"Collection charges" means the charges which the Municipality is entitled to recover in terms of section 75A(1) of the Systems Act, and includes the administrative cost–

- (a) of reminding any ratepayer or customer of arrears;
- (b) for the termination, restriction or reinstatement of any municipal service to a defaulting ratepayer or customer;
- (c) of any notice rendered, sent, delivered or published to a ratepayer or customer in terms of this By-law or any other law;
- (d) of any merchant fee; and
- (e) in respect of any other charge which the Municipality is by law entitled to recover;

"Constitution" means the Constitution of the Republic of South Africa, 1996, as amended;

"Consolidated account" means a monthly account reflecting municipal service fees, charges, surcharges on fees, property rates, sundry charges and other municipal taxes, levies and duties and all consolidations in terms of section 102 of the Act;

"Customer" means any person with whom the Municipality or its authorised agent has entered into an agreement for the provision of any municipal service to the premises of which such person is an owner, including any person who is authorised by the owner to enter into such an agreement with the Municipality in respect of the owner's premises;

"Due date" means the date on which a customer's account becomes payable, which in the case of monthly accounts is twenty-one days from the date of the account, and in the case of annual accounts is the 31st of October each year;

"Fee" means a prescribed amount charged by the Municipality to a customer for the provision of any municipal service;

"Ingonyama Trust land" means land held in trust by the Ingonyama Trust established in terms of section 2 of the Ingonyama Trust Act, No. 3KZ of 1994;

"Municipal council" or **"council"** means the Mandeni municipal council, a municipal council referred to in section 157(1) of the Constitution;

"Municipal Finance Management Act" means the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

"Municipal manager" means a person appointed in terms of section 54A of the Municipal Systems Act as the head of administration of the municipal council;

"Municipal service" means a service provided by the Municipality in terms of its powers and functions to or for the benefit of the local community, irrespective of whether or not

–

(a) such service is provided by the Municipality itself or by engaging an external mechanism contemplated in section 76 of the Systems Act; or

(b) any fees, charges or tariffs are levied in respect thereof;

"Occupier" means any person who occupies any premises or part thereof, without regard to the title under which such person occupies the premises concerned;

"Owner" –

(a) in relation to a property referred to in paragraph (a) of the definition of **"property"**, means a person in whose name ownership of the property is registered;

(b) in relation to a right referred to in paragraph (b) of the definition of **"property"**, means a person in whose name the right is registered;

(c) in relation to a land tenure right referred to in paragraph (c) of the definition of **"property"**, means a person in whose name the right is registered or to whom it was granted in terms of legislation, excluding permission to occupy;

(d) in relation to public service infrastructure referred to in paragraph (d) of the definition of **"property"**, means the organ of state which owns or controls that public service infrastructure as envisaged in the definition of **"publicly controlled"**; and

(e) includes a person whom the Municipality may for the purpose of this By-law regard as the owner of a property in the following cases:

(i) a trustee, in the case of property in a trust excluding state trust land;

(ii) an executor or administrator, in the case of a property in a deceased estate;

(iii) a trustee or liquidator, in the case of a property in an insolvent estate or the owner of which is in liquidation;

- (iv) a judicial manager, in the case of a property in the estate of a person under judicial management;
- (v) a curator, in the case of a person in the estate of a person under curatorship;
- (vi) a person in whose favour a usufruct or other personal servitude is registered, in the case of property that is subject to a usufruct or other personal servitude;
- (vii) a lessee, in the case of a property that is registered in the name of the Municipality and is let by it to such lessee;
- (viii) a buyer, in the case of a property that was sold by the Municipality and of which possession was given to the buyer pending registration of ownership in the name of the buyer; or
- (ix) a child or children in charge of the property in the case of child headed households;

"Person" means a natural or juristic person, including an organ of state;

"Policy" means the Credit Control and Debt Collection Policy adopted by the council, as amended from time to time;

"Premises" means any piece of land, with or without any building or structure thereon where—

(a), the external surface boundaries of which are delineated on—

- (i) a general plan or diagram registered in terms of the Land Survey Act, 1927 (Act No. 9 of 1927), or in terms of the Deeds Registry Act, 1937 (Act No. 47 of 1937); or
- (ii) a sectional plan registered in terms of the Sectional Titles Act, 1986 (Act No. 95 of 1986);

(b) there is an official document in respect of rural land or Ingonyama Trust land, which is situated within the area of jurisdiction of the Municipality; or

(c) a municipal service is rendered on land which is not specified on a plan;

"Property" means—

- (a) immovable property registered in the name of a person, including, in the case of sectional title scheme, a sectional title unit registered in the name of a person;
- (b) a right registered against immovable property in the name of a person;
- (c) a land tenure right registered in the name of a person or granted to a person in terms of legislation, excluding a permission to occupy; or
- (d) public service infrastructure;

"Publicly controlled" means owned by or otherwise under the control of an organ of state, including a—

- (a) public entity listed in the Public Finance Management Act, 1999 (Act 1 of 1999);
- (b) municipality; or
- (c) municipal entity as defined in the Systems Act;

"Rates" means a municipal rate on property envisaged in section 229 (1)(a) of the Constitution levied by the Municipality in terms of the Rates Act;

"Rates Act" means the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004);

"Sundry charge" means an amount charged to a customer which is not directly linked to a property and which includes but is not limited to—

- (a) charges arising from damages to municipal property and equipment;
- (b) monies awarded to the Municipality through court orders and judgments; and
- (c) fines;

"Systems Act" means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000); and

"Tenderer" means a contractor, service provider or supplier who has submitted a tender for the provision of services or the delivery of goods to the Municipality.

Interpretation of By-law

2. (1) If there is a conflict of interpretation between the English version of this By-law and a translated version, the English version prevails.

(2) This By-law must be read in conjunction with the Policy.

Objects of By-law

3. The objects of this By-law are to—

- (a) give effect to the Municipality's Credit Control and Debt Collection Policy, and its implementation and enforcement in terms of section 156(2) of the Constitution read with sections 96 and 98 of the Systems Act;
- (b) provide for the collection of monies due and payable to the Municipality; and
- (c) provide for matters incidental thereto.

Application of By-law

4. This By-law applies throughout the Municipality's area of jurisdiction in respect of any amounts payable to—

- (a) the Municipality for rates or the provision of any municipal service;
- (b) any service provider of the Municipality in respect of any municipal service provided by the service provider concerned on behalf of the Municipality; or
- (c) any other amount payable to the Municipality.

CHAPTER 2

REQUIREMENTS FOR THE PROVISION OF MUNICIPAL SERVICES

Registration for the provision of municipal services

5. (1) An applicant for a municipal service must comply with the registration process prescribed by the Municipality in the Policy for the provision of such service, which includes but is not limited to—

- (a) the submission of a written application for the provision of such service on a form prescribed by the Municipality for that purpose;

- (b) furnishing any information or documentation required by the CFO for the purpose of registering for such service;
- (c) entering into a service agreement with the Municipality; and
- (d) the payment of a deposit of an amount prescribed by the CFO to be held by the Municipality as consolidated security in respect of all municipal services provided by the Municipality to the applicant.

(2) If an applicant is an existing customer of the Municipality in respect of any other municipal service on premises in respect of which any amount is in arrears, such applicant must –

- (a) pay the arrears in full; or
- (b) at the discretion of the Municipality, make suitable arrangements with the Municipality for the payment of such arrears, before an application for a new service in terms of this By-law may be considered.

Deposits

6. (1) The payment of a deposit mentioned in paragraph 5(1)(d) is subject to the criteria determined by the CFO in accordance with the Policy and is due and payable at–

- (a) the time of application for municipal services; and
- (b) any other time deemed necessary by the Municipality.

(2) Payment of a deposit must be made in cash unless otherwise provided for in terms of the Policy.

(3) Deposits paid by a customer to the Municipality shall be held as a consolidated deposit and used as security for any or all of the charges or amounts included in the account.

(4) The Municipality may at any time and at its sole discretion require a customer to increase the security furnished in terms of paragraph 5(1)(d).

(5) Interest on cash deposits held by the Municipality as security shall accrue as prescribed in terms of the Policy at a rate determined by Council in terms of section 75A of the Systems Act, and the deposit plus interest accrued must be taken into account upon closure or termination of a customer's account.

Service agreement between the Municipality and a customer

7.(1) The Municipality may not approve an application for the provision of any municipal service, unless the applicant has signed an agreement on a form prescribed by the Municipality for that purpose accepting the terms and conditions for the provision of such service, all of which are deemed to be incorporated into this By-law.

(2) Where the purpose for or extent to which any municipal service used has changed, the onus and obligation rests on the customer to advise the Municipality of such change.

Measurement of consumption

8.(1) The Municipality must conduct or cause to be conducted an accurate measurement of the municipal services consumed by a customer at intervals determined in terms of the water and electricity policies: Provided that nothing in this section prevents the Municipality from making an estimate of the consumption of municipal services for any relevant period if—

- (a) the reading of the meter could not be obtained in respect of the period in question;
- (b) no meter has been installed to measure the consumption on the premises concerned;
- or
- (c) for any other reason the meter could not be accessed to be read.

(2) Irrespective of the fee payable for the consumption of municipal services being based on measured or estimated consumption, the customer concerned remains liable for the payment of the prescribed fee in respect thereof.

Review of existing service agreements

9. (1) The Municipality may review the terms and conditions of any existing service agreement with a customer to take into account any change in law or the circumstances surrounding the provision of any municipal service by the Municipality, and require such customer to enter into a new service agreement with the Municipality based on the resultant changes in law or circumstances.

(2) Subsections 6(4) and 6(5) apply to any deposit or security payable by a customer in respect of a new service agreement referred to in subsection (1).

Termination of service agreements

10. (1) Subject to sections 17 and 26, an agreement for the provision of any municipal service may be terminated by—

(a) a customer by giving notice in writing of not less than 14 days to the Municipality of such customer's intention to do so; or

(b) the Municipality, after due compliance with any applicable law and the rules of natural justice, by giving notice in writing of not less than 14 days to a customer, if the customer concerned has —

(i) not used the municipal service during the preceding six months and has not made any request to the Municipality for the retention of the agreement;

(ii) in relation to the municipal service concerned, breached or failed to comply with any specific term or condition for the provision of such service, and has failed to remedy such breach or rectify such failure after service on such customer of a notice to do so in terms of section 11;

(iii) failed to pay any prescribed fee, collection charge or interest due and payable in respect of the municipal service concerned;

(iv) made an arrangement with another service provider to provide the municipal service concerned to the customer; or

(v) vacated the premises to which the agreement concerned relates.

(2) If a customer to whom a notice has been given in terms of paragraph (1)(b) makes written representation to the CFO within the period stipulated in that notice as to why the agreement concerned should not be terminated, the agreement must not be terminated until the CFO has responded in writing to the written representation made by the customer concerned.

Notice of compliance

11. If a customer breaches or fails or refuses to comply with any provision of this By-law, a written notice must be served on such customer to comply with the relevant provision of this By-law within a stipulated period in order to avoid the service agreement to which the non-compliance relates being terminated in terms of paragraph 10(1)(b).

CHAPTER 3

ACCOUNT ADMINISTRATION

Accounts

12.(1) The Municipality must maintain proper and accurate accounts which must be rendered and administered by it in accordance with the Policy, this By-law, as well as any other applicable law.

(2) Failure by the Municipality to render an account does not relieve a customer of an obligation to pay any amount that is due and payable by such customer in terms of this By-law.

(3) The Municipality may, in accordance with the section 102 of the Systems Act–

- (a) consolidate any separate accounts of a customer liable for payments in terms of this By-law to the Municipality;
- (b) credit any payment by such customer against any account of that customer; and
- (c) implement any of the debt collection and credit control measures provided for in this By-law or the Policy in relation to any arrears on any of the accounts of the customer.

(4) In the event of separate accounts being consolidated as contemplated in subsection (3), the total amount due and payable by a customer shall constitute a consolidated debt, and any payment made by a customer of an amount less than the total amount due will, subject to section 23, be allocated in the reduction of the consolidated debt in the order prescribed by the CFO in his or her sole discretion.

(5) Any amount paid by a customer in excess of an existing debt may be–

- (a) held in credit for the customer in anticipation of future rates and fees for municipal services or for the purposes contemplated in section 20(1)(b), without any interest accruing on such amount;
 - (b) refunded either as a whole or a portion thereof to the customer concerned, subject to the right of the Municipality to withhold payment until it is satisfied that payment of such refund is not in contravention of any law; or
 - (c) refunded to the conveyancing attorney if the property has been transferred.
- (6) Any interest accruing on the deposit paid by a customer in terms of this By-law must be credited to the account of such customer.
- (7) Should the Municipality become aware that the customer has since vacated the premises supplied as his or her address in terms of this By-law, the Municipality must, after deducting any outstanding amounts due to it from the deposit of such customer, place the balance thereof in an account retained for such customer for a period of time determined in the Policy from the date on which the customer's disappearance became known to the Municipality.
- (8) After the expiry of the period mentioned in subsection (7), the balance of the deposit, together with interest thereon, will be forfeited to the Municipality, unless the CFO is not satisfied that this is just and equitable to do so.

Account information

13. (1) Without limiting the amount of information which may be included by the Municipality in a customer's account, any account rendered by the Municipality to a customer must contain at least the following information—

- (a) the consumption or estimated consumption as determined for the relevant consumption period;
- (b) the period to which the consumption or estimated consumption relates;
- (c) the amount due based on the consumption or estimated consumption;
- (d) the amount due and payable for any other municipal service;
- (e) the amount due and payable for any sundry charge;
- (f) the amount in arrears, if any;

- (g) the interest payable on any arrears, if any;
- (h) collection charges insofar as they may be relevant;
- (i) the final date for payment; and
- (j) the methods, places and approved agents where payments may be made.

Account administration and monitoring

14. The Municipality must, subject to section 7, implement reasonable measures to ensure –

- (a) accurate metering of consumption at fixed intervals;
- (b) limited delay between service connection and the first and subsequent rendering of accounts;
- (c) accurate and up-to-date information contained in accounts rendered to customers;
- (d) accurate monthly accounts with the application of the appropriate and correct prescribed fees, rates and other related amounts due and payable;
- (e) timely dispatch of accounts to correct addresses furnished by customers;
- (f) adequate provision and the efficient operation of facilities for payment throughout the Municipality's area of jurisdiction;
- (g) where necessary, the appointment of agents to accept payments on behalf of the Municipality; and
- (h) appropriate and reasonable hours of business in order to facilitate account payments.

Responsibility for payment of account

15. (1) It is the responsibility of the customer to ensure that his or her account is paid timeously and that such account does not fall into arrears.

(2) Where a customer is a tenant of the property concerned, the owner of the property shall be held jointly and severally liable with the tenant for debts on the property.

(3) Subsection (2) does not apply to the payment of rates, which payment shall be the sole responsibility of the owner or owners of such property.

Disputes and enquiries in respect of accounts rendered by the Municipality

16. (1) A customer may lodge a written dispute with the Municipality to challenge the correctness or accuracy of any amount due and payable by such customer reflected in an account rendered by the Municipality in terms of this By-law: Provided that such dispute must be lodged with the Municipality before or on the due date for payment specified in the account concerned.

(2) A customer must, pending resolution of the dispute, continue to make regular monthly payments in respect of rates, if applicable, or in respect of any municipal service, as the case may be, based on the average monthly fees for the preceding three months prior to the dispute arising, plus interest if applicable, until the dispute is resolved.

(3) Where a customer fails to lodge a dispute within the period mentioned in subsection (1), any

correspondence received from the customer after such period concerning the correctness or accuracy of an account, will be treated as an enquiry and –

(a) the account will not be suspended; and

(b) such enquiry must be accompanied by the payment of at least an amount equal to the average amount per month that was due and payable in respect of the service concerned during the preceding three months.

(4) If an objection or appeal is lodged against the value of property in terms of sections 50 and 54 of the Rates Act, on publication of a new or supplementary valuation roll in terms of section 49 of the Rates Act, a customer must still make payment to the Municipality based on the rates payable in respect of the property concerned on the previous valuation roll prior to the lodgement of the objection or appeal.

(5) Any amount not in dispute must be paid in full by the customer and municipal services may be disconnected or restricted where such amounts remain unpaid.

(6) An authorised official must register the dispute or enquiry and take reasonable steps to ensure that the dispute or enquiry is addressed within a reasonable period.

(7) The CFO must –

(a) investigate or cause the dispute or enquiry to be investigated within 30 days, or as soon as possible after the such dispute or enquiry received; and

- (b) inform the customer, in writing, of his or her finding as soon as possible after conclusion of the investigation, instructing that either such customer's account will be credited with an amount found to have been overpaid or, alternatively, that any amount found to be due and payable must, subject to section 23, be paid within a reasonable period from the date on which the customer is notified thereof, unless an appeal is lodged within that period in terms of subsection (7).
- (8) Except for instances where the right of appeal is specifically afforded to a customer in terms of any other law, a customer may, subject to section 34, lodge an appeal in writing with the municipal manager in terms of section 62 of the Systems Act against a decision referred to in subsection (6), within 21 days of the date of notification of the decision.
- (9) The Municipality must inform the customer concerned in writing of the decision on the appeal, instructing that any amount found to be overpaid will be credited to such customer's account or, alternatively, that any amount found to be due and payable must be paid within seven days from the date on which the customer is notified thereof.
- (10) The Municipality will only supply records of documents to the customer for the last 5 years.

Failure to pay accounts on due date

- 17.** (1) The Municipality must take the necessary steps to recover payment of any accounts which remain unpaid after the due date for the payment thereof.
- (2) Where—
- (a) a tenant or an occupier occupies a property in respect of which arrears are owing; or
 - (b) an agent acts for an owner in respect of whose property arrears are owing,
- the Municipality may recover from such tenant, occupier or agent such monies as are owing by the tenant, occupier or agent to the owner, as payment of the arrears owed by such owner.
- (3) The Municipality may recover the amount in whole or in part despite any contractual obligation to the contrary on the tenant, occupier or agent.

(4) The amount the Municipality may recover from the tenant, occupier or agent is limited to the amount of the rent or other money due and payable, but not yet paid by the tenant, occupier or agent to the owner.

(5) Should the tenant, occupier or agent refuse to pay over any monies to the Municipality in terms of this section, the services of the tenant, occupier or agent may be disconnected.

(6) Before resorting to litigation for the recovery of arrears, the Municipality may send a final demand notice, which may appear on the account addressed to the defaulting customer, calling upon such customer to make payment within a stipulated period, failing which legal steps may be taken for the recovery thereof.

(7) Failure by the Municipality to send a final demand notice does not relieve a customer from paying the arrears.

Rates and municipal service charges upon the property

18. The rates, taxes, levies and duties on property and municipal service charges are a charge upon the property, and the Municipality may take any of the following actions to secure payment thereof:

- (a) terminate or restrict the provision of any municipal service in terms of section 19;
- (b) allocate the whole or a portion of any payment of an account, or the whole or a portion of a pre-payment for future accounts as contemplated in paragraph 12(5)(a), as payment for arrear municipal service fees or rates;
- (c) subject to section 118 (1) of the Systems Act, withhold the issuing of a prescribed rates or revenue clearance certificate until all amounts due in connection with the property concerned for municipal service fees, surcharges on fees, rates and other municipal taxes, levies and duties for the period contemplated in paragraph 118(1)(b) of the Systems Act have been fully paid;
- (d) unilaterally disconnect the supply of electricity supplied by way of an electricity dispenser to any premises where such premises are charged with an overdue amount in terms of an applicable consolidated bill, or refuse to supply any person with any card or token for the operation of an electricity dispenser serving any premises charged with an overdue amount in terms of any consolidated bill;

- (e) refuse to register new customers for services on the property until the previous debt is paid; or
- (f) in respect of the consolidated debt, recover arrears from tenants or occupiers of the property in respect of which the consolidated debt is owing, or from the agents as contemplated in sections 28 and 29 of the Rates Act.

Termination or restriction of a municipal service

19. (1) The Municipality must undertake regular maintenance of the relevant municipal infrastructure to ensure continuous and undisturbed supply of municipal services to its customers.

(2) The provisions of subsection (1) must not be interpreted as preventing the Municipality from terminating or restricting the provision of any service in terms of the prescribed termination and restriction procedures set out in the Policy to any premises if the customers, heirs or trustees in respect of the municipal service concerned –

- (a) fails to make full payment of arrears on or before the final date for the payment thereof, and the customer fails to sign an acknowledgement of debt in terms of section 26 in respect of the arrears concerned before termination or restriction;
- (b) fails to pay any instalment payable in terms of an agreement referred to in paragraph (a) before or on the due date;
- (c) fails to comply with any condition of provision imposed by the Municipality in respect of the service concerned;
- (d) obstructs the efficient provision of the service concerned to another customer;
- (e) provides the service concerned to a person who is not entitled thereto or permits such provision to continue;
- (f) causes a situation relating to any service which, in the opinion of the Chief Financial Officer, is dangerous or constitutes a contravention of any applicable law, including the common law;

- (g) tampers with an electricity or water meter or in any way reinstates without the Municipality's knowledge or consent the provision of a previously terminated or restricted service;
 - (h) is placed under provisional sequestration, liquidation or judicial management, or commits an act of insolvency in terms of the Insolvency Act, 1936 (Act No. 24 of 1936) or is subject to an administration order granted in terms of section 74 of the Magistrate's Court Act, 1944 (Act No. 32 of 1944), and there is a failure to enter into a new service agreement within 14 days of the Municipality requiring such service agreement in terms of section 9 read with section 18 of this By-law; or
 - (i) fails to notify the Municipality within 30 days from date of death of the customer.
- (3) The Municipality must send a disconnection notice to a customer informing such customer—
- (a) that the provision of the service concerned will be, or has been disconnected on the date specified in such notice; and
 - (b) of the steps which can be taken to have the service reinstated.
- (4) The notice of disconnection may be included on the bill or any other notice issued in terms of this By-law.
- (5) If a customer intends to terminate or transfer an account for municipal services, the customer must provide the Municipality with notice of such intention within the time period provided for in the Policy.

Reinstatement of the supply of a municipal service

- 20.(1)** Where the supply of a municipal service to a customer has been terminated or restricted by the Municipality in terms of section 19, the supply of such service to the customer concerned may not be reinstated either fully or partially until –
- (a) the full amount of arrears, including interest and collection charges, if any, have been paid;
 - (b) an agreement for payment of arrears contemplated in paragraph (a) has been entered into in terms of section 26;

(c) the full amount of arrears in respect of any agreement referred to in paragraph (b), including interest and collection charges, if any, and any increased deposit, where required, have been paid; or

(d) any other condition considered by the CFO to be appropriate, including payment of additional security, has been complied with.

(2) Once all the conditions stipulated in subsection (1) have been met, a reconnection order must be issued by the authorised official to the effect that every applicable condition contemplated in subsection (1) has been complied with and that the municipal service concerned may be reconnected.

Interest charges

21.(1) Subject to the provisions of sections 9 and 55 of the Rates Act, read with paragraph 64 (2) (g) of the Municipal Finance Management Act, all arrears in respect of accounts for rates and municipal services bear interest equivalent to the rate of interest as determined in terms of the Rates Regulations or any other applicable legislation.

(2) Interest calculated on arrears may only be reversed as determined by the Municipality in terms of the Policy.

Administration charges

22. A prescribed administration charge may be levied by the Municipality against the account of a customer in respect of any action taken by or on behalf of the Municipality in terms of this By-law or the Policy.

Municipality's discretion in appropriation of payments received

23.(1) Subject to subsection 12(3), the Municipality may appropriate monies received in respect of any debt contemplated in this By-law at its sole discretion, irrespective of any instruction issued by the customer directing how such monies are to be appropriated.

(2) If any amount due and payable to the Municipality in terms of this By-law has not been paid in full, any lesser amount tendered to and accepted by any municipal employee does not

constitute payment in full and final settlement of the full amount, unless the lesser amount was accepted in full and final settlement in writing under a power delegated or sub-delegated to such employee in terms of section 59 of the Systems Act.

Actions for the recovery of outstanding amounts

24. (1) The Municipality may recover charges, costs and interest on any outstanding amount, which may include but are not limited to—

- (a) costs and administration fees where payments to the Municipality by negotiable instruments are dishonoured by banks when presented for payment;
- (b) legal and administration costs, including attorney-and-client costs and tracing fees incurred in the recovery of debts;
- (c) restriction, disconnection and reconnection fees, where any service has been restricted or disconnected as a result of non-compliance with this by-law;
- (d) any losses the Municipality may suffer as a result of tampering with municipal equipment or meters; and
- (e) any collection commission incurred.

(2) Subject to section 18, if an amount payable to the Municipality in respect of an account for rates or service charges remains outstanding, wholly or in part, after the due date for the payment thereof—

- (a) the defaulting customer may be listed with a credit bureau; and
- (b) may be handed over to a debt collector or an attorney for collection.

(3) In the event of an overdue account being handed over to a debt collector or an attorney for collection, the customer concerned is liable for any interest and collection charges raised in respect thereof.

(4) An action taken in terms of this By-law may not be suspended or withdrawn unless the arrears, any charge, cost, interest thereon, and additional security, if required by the Municipality, have been paid in full.

(5) Subject to Schedule 2 item 10 of the Systems Act, any amount in arrears on an account of a municipal staff member may be deducted by the Municipality from such municipal staff member's salary, as the case may be.

(6) The Municipality may enter into an agreement with any councillor whose account is in arrears to deduct any amount in arrears from the councillor's allowance.

(7) Charges, costs and interest recovered in terms of subsection 1 may be levied against the arrear account of the customer.

(8) The amount or manner of calculation of the interest charged or the amount or manner of calculation of collection charges must be passed by the municipal council with a supporting vote of a majority of its members in terms of section 75A of the Systems Act.

Agreement with Employer

25. (1) Subject to section 103 of the Systems Act, the Municipality may, with the consent of the customer, enter into an agreement with the customer's employer to deduct from the salary or wages of the customer—

- (a) any outstanding amount due by that customer to the Municipality; or
- (b) regular monthly amounts as may be agreed upon.

Acknowledgements of debt

26.(1) Any customer who is indebted to the Municipality may be required to sign a written acknowledgement of debt on a form prescribed by the Municipality for that purpose setting out the terms which are agreeable to the Municipality for the payment of such debt.

(2) If the amount payable by a customer in terms of an acknowledgement of debt contemplated in subsection (1) is payable in instalments, any payment received from such customer in an amount less than the total amount due may be allocated in reduction of the consolidated debt of such customer in the order prescribed in the Policy, notwithstanding any instruction to the contrary by the customer concerned.

(3) A customer may be required to arrange a debit order for the payment of arrears in respect of which an acknowledgement of debt contemplated in subsection (1) has been signed by the customer concerned.

(4) Subject to subsection (5), no acknowledgement of debt may provide for payment over a period longer than 24 months.

- (5) (a) An acknowledgement of debt providing for payment over a period in excess of 24 months, may be accepted by the Municipality in terms of delegated authority, if special circumstances which the customer could not reasonably have prevented or avoided, prevail and which, in the opinion of the CFO, warrant a longer period of payment; and
- (b) Documentary proof of any special circumstances as contemplated in paragraph (a) must be furnished by a customer on request by the Municipality.

(6) The Municipality must, in exercising its discretion in terms of subsection (5), have regard to a customer's—

- (a) credit record;
- (b) consumption of services;
- (c) ability to afford the proposed instalments, taking into account the customer's financial situation;
- (d) level of service;
- (e) previous breaches of agreements for the payment of arrears in instalments; and
- (f) any other relevant factors.

(7) If a customer fails to comply with the terms of an acknowledgement of debt contemplated in subsection (1), the total outstanding amount, including the arrears, any interest thereon, any collection charges, and payment of a higher deposit if required by the Municipality, will immediately become due and payable, and the additional security, if so required, must be provided, without further notice.

(8) If a customer fails to comply with the terms of an acknowledgement of debt contemplated in subsection (1) that was signed after receipt of a disconnection notice for water or electricity services, or both as the case may be, the municipal service concerned may be disconnected

without further notice, in addition to any other action taken against or which may be taken by the Municipality against the customer concerned.

(9) The Municipality may not accept an acknowledgement of debt by a customer if that customer has failed to honour a previous acknowledgement of debt for the payment of arrears to the Municipality, unless the CFO otherwise decides on good cause shown.

(10) Once an acknowledgement of debt contemplated in subsection (1) is signed, the amount in arrears must be reflected as a current amount.

CHAPTER 4

ASSISTANCE TO THE POOR AND IRRECOVERABLE DEBTS

Assistance to the poor

27.(1) The Municipality may, in terms of the qualifying criteria set out in the Policy, grant assistance to any person who is regarded by the Municipality as poor based on the qualifying criteria as determined by the Municipality from time to time in the Policy.

(2) The person who qualifies for assistance in terms of subsection (1) must be prepared to convert to pre-payment metering whenever required by the Municipality to do so.

(3) The Municipality must conduct regular audits of persons who are receiving assistance in terms of subsection (1) to ensure that they still meet the criteria for such qualification and, if not, take the necessary steps for the withdrawal of such assistance, subject to due compliance with the Constitution and the rules of natural justice.

Irrecoverable debts

28. (1) Where a debt owing to the Municipality is considered irrecoverable in terms of the criteria set out in the Policy, and provided that there is sufficient provision to cover bad debts due to the Municipality, the CFO must write off such debt in accordance with the Policy.

(2) The CFO must report to the council at its next meeting all amounts that have been written off as irrecoverable in terms of subsection (1), and all such information must also be included in

the monthly budget statements which must be rendered by the municipal manager in terms of section 71 of the Municipal Finance Management Act.

CHAPTER 5

MISCELLANEOUS

Municipality's right of access to premises

29.(1) In accordance with the Policy and section 101 of the Systems Act, an authorised official may access any premises at any reasonable time in order to read, inspect, install or repair any meter or service connection, or to disconnect, stop or restrict the provision of any service.

(2) Should access to the premises be unreasonably denied or prevented, a disconnection penalty fee may be raised in the account, over and above any penalty which may be imposed in terms of section 35.

Transmission of documents

30. Where any account, notice or other document issued by the Municipality in terms of this By-law is required to be given or delivered by the Municipality to any person, such communication may be posted by ordinary mail to the last known address of the customer; e-mailed to the customers e-mail account provided; messaged (sms'd) to the customers cell phone number; or be given or delivered in terms of Section 115 of the Systems Act or the Electronic Communications Act, 2005 (Act 36 of 2005).

***Prima facie* evidence of documentation**

31. For the purposes of the recovery of any amount due and payable to the Municipality in terms of this By-law—

- (a) a copy of any relevant account; and
- (b) an extract from the Municipality's records containing the details of such account and certified by an authorised official as being correct,

shall constitute *prima facie* evidence of the information contained in such documents.

Update of customer details

32. A customer must furnish the Municipality with updated information details of the customer when a change of such information occurs, which includes but is not limited to–

- (a) contact details of the customer;
- (b) details of executors or administrators of deceased estates;
- (c) deregistration of a company, close corporation or trust if the company, close corporation or trust is the account holder; and
- (d) details of deceased–
 - (i) company directors;
 - (ii) members of close corporations; and
 - (iii) trustees of Trusts.

CHAPTER 6

PROCUREMENT OF GOODS AND SERVICES BY THE MUNICIPALITY

Procurement of goods and services by the Municipality

33. (1) When submitting a tender for the provision of goods or services to the Municipality, every tenderer must prove to the satisfaction of the Municipality that all accounts for municipal services for which the tenderer and each of its directors, members, owners, partners or trustees are liable, have been paid in accordance with the requirements contained in the Policy and the Municipality's Supply Chain Policy.

(2) the Municipality may at its sole discretion check whether all the municipal accounts of its supplier of goods or services are up to date and if found to be in arrears, any amount payable to the supplier may be set off against the arrear amount.

(3) Where a contractor's place of business is out of the jurisdiction of the Municipality, a Revenue Clearance Certificate from the relevant Municipality must be produced.

(4) Where a contractor, or its directors, members, owners, partners or trustees, is indebted to the Municipality for rates or any service charges and payments are due to that contractor in respect of goods or services provided to the Municipality, or in terms of any contractual arrangement with the Municipality, the arrear amount owing may be set off against such payments.

CHAPTER 7

GENERAL

Appeals

34. (1) A person whose rights are affected by a decision taken by an authorised official in terms of this By-law may appeal against the decision in terms of the Appeals provision contained in Section 62 of the Systems Act by giving written notice of the appeal and reasons to the municipal manager within 21 days of the date of the notification of the decision.

(2) The municipal manager must promptly submit the appeal to the appropriate appeal authority.

(3) The appeal authority must commence with an appeal within six weeks and decide the appeal within a reasonable period.

(4) The appeal authority must confirm, vary or revoke the decision, but no such variation or revocation of a decision may detract from any rights which may have accrued as a result of the decision.

(5) The appeal authority must furnish written reasons for its decision on all appeal matters.

(6) All appeals lodged are done so in terms of the Systems Act and not in terms of this By-law.

Offences and penalties

35.(1) Any person who contravenes or fails to comply with section 29 of this By-law is guilty of an offence and is liable upon conviction to a fine or imprisonment for a period not exceeding one year.

(2) Any person who fails to furnish the Municipality with updated information details in terms of section 32 may result in the Municipality–

(a) withholding the provision of services of; or

(b) imposing a sundry charge on,
the customer concerned.

Delegations

36.(1) Subject to the Constitution and applicable national and provincial laws, any-

- (a) power, excluding a power referred to in section 160(2) of the Constitution;
- (b) function; or
- (c) duty,

conferred, in terms of this By-law, upon the council, or on any of the Municipality's other political structures, political office bearers, councillors or staff members, may be delegated or sub-delegated by such political structure, political office bearer, councillor or staff member, to an entity within, or a staff member employed by, the Municipality.

(2) The delegation in terms of sub-section (1) must be effected in accordance with the system of delegation adopted by the council in accordance with section 59(1) of the Systems Act, subject to the criteria set out in section 50(2) of the said Act.

(3) Any delegation contemplated in this section must be recorded in the Register of Delegations, which must contain information on the-

- (a) entity or person issuing the delegation or sub-delegation;
- (b) recipient of the delegation or sub-delegation; and
- (c) conditions attached to the delegation or sub-delegation.

Repeal of laws and savings

37. (1) The provision of any by-laws relating to the control of credit and debt collection by the municipality are hereby repealed insofar as they relate to matters provided for in these by-laws;

(2) Provided that such provision shall be deemed not to have been repealed in respect of any such by-law which has not been repealed and which is not repugnant to these by-laws on the basis as determined by the relevant by-laws.

Short title and commencement

38. This By-law is called the Credit Control and Debt Collection By-law, 2016 and takes effect on the date of publication thereof in the *Provincial Gazette* or as otherwise indicated in the notice thereto.

ANNEXURES**ANNEXURE A: APPLICATION FOR MUNICIPAL SERVICES****ANNEXURE B: APPLICATION FOR REGISTRATION AS INDIGENT CUTOMER****ANNEXURE C: COPY OF MONTHLY MUNICIPAL ACCOUNT****ANNEXURE A: APPLICATION FOR MUNICIPAL SERVICES**

APPLICATION FOR MUNICIPAL SERVICES

TYPE OF APPLICATION

Domestic Commercial/ industrial institutional

TYPE OF CUSTOMER

Individual CC partner Pty (Ltd) lessee owner

PARTICULAR OF APPLICANT
Name of corporate entity

Registration number of corporate entity			
Surname		Initials	
Id number			
Marital status			
If married- in or out of community property			
Occupation			
Tel No.			
Cell No.			
Address of applicant(for purposes of account delivery)			
Physical address		Postal address	
Next on kin			
1. Name		Tell No.	
Address			
2. Name		Tell No.	
Address			

Employer's Details			
Name		Tell No.	
Physical		Period in	

Address		service	
Credit references			
1. Name of company		Account No.	
Address		Tell No.	
2. Name of company		Account No.	
Address		Tell No.	
Particular of owner (if not applicant)			
Name of corporate entity			
Registration number corporate entity			
Surname		initials	
Id number			
Occupation			
Tell no.			
Cell no.			
Physical address		Postal address	
Property to which municipal service must be provided			
Suburb			
Zone			
Stand no.			
Street name			
Street number			
Number of person over the age of 18 years living on the property			

Type of municipal service to be provided		
Water supply service	Communal stand pipes	
	Yard connection	
	In house connection	
Sanitation services	Night soil removal	
	Water borne sewerage	
Electricity services	Per-paid	
	Other	
Refuse removal services		
Date on which provision of services should commence		
Payment details		
Cash including cheque & credit card)		

Debit order		
Stop order		
Other method or electronic transfer		
Bank details	Branch	
	Account No.	

A CERTIFIED COPY OF THE APPLICANT'S IDENTITY DOCUMENT/ POWER OF ATTORNEY MUST BE ATTACHED TO THE APPLICATION

I/ we hereby –

- (a) apply for the provision of municipal services to be provided to the above property;
- (b) accept the conditions applicable to the provision of municipal services as set out the municipality's policy, by-laws and conditions supply of any service provider of the municipality;
- (c) declare that I was informed that the documents referred to in (b) are available for inspection at the office of the municipality during office hours;
- (d) declared that this application form and implications thereof was explained me;

- (e) declared that all payments due and payable by me in pursuance of the application shall promptly be paid by me on the due date; and
- (f) declared that the information provided in this application form is true or correct.

Applicant

Municipality/ Authorized agent

Date

Signature of owner (if not applicant)

Date

CERTIFICATION BY MUNICIPALITY

The consequences of the above declaration made by the applicant were explained to him/her/it and he/she/it indicated that the contents of the application were understood.

Municipal/ authorized agent

Date

FOR OFFICE USE ONLY

Deposit paid

Date

Amount

Receipt number

Account number

Commencement date of service

Area code

ANNEXURE B: APPLICATION FOR REGISTRATION AS INDIGENT CUSTOMER**APPLICATION FOR REGISTRATION AS INDEGENT CUSTOMER**

Note: an application for municipal services must be completed or updated on submission of this application.

Particular of applicant			
Surname		Initials	
ID number			
Marital status			
If married- in/ out of community property			
Occupation			
Tell No.			
Cell No.			
Address of applicant			
Physical address		Postal address	
Number of properties owned by applicant and all members of the household			
Details of properties if applicable			
Property 1	Physical address		
	Name of owner		
	Name of bondholder		
	Account number		
	Deed registration number		
	Type of structure		

Property 2	Physical address	
	Name of owner	
	Name of bondholder	
	Account number	
	Deed registration number	
	Type of structure	

Is property/ properties or a portion thereof leased to a third person? (yes / no).			
If leased, rent received			
Number of all members in household			
Combined gross income of all members of the household per month			
Details of all members of household over the age of 18 years resident at the:			
Property			
1. surname		2. Surname	
Full name		Full name	
ID number		ID number	
Employed(yes/no)		Employed (yes/no)	
Salary including Benefit, if relevant		Salary including Benefit, if relevant	
3. surname		4. Surname	
Full name		Full name	
ID number		ID number	
Employed (yes/no)		Employed (yes/no)	
Salary including		Salary including	

Benefit, if relevant		Benefits, if relevant	
Details of any other income received by household (i.e. such as old age pension, disability pension, welfare, etc.)			
1. type of income		2.type of income	
Institution		Institution	
Amount		Amount	
Reference number		Reference number	
3. type of income		4. type of income	
Institution		Institution	
Amount		Amount	
Reference number		Reference number	
5. type of income		6. type of income	
Institution		Institution	
Amount		Amount	
Reference number		Reference number	
Details of monthly expenses of household:			
1. Groceries		2. School fees	
3.Clothes		4.	
5.		6.	
7.		8.	
9.		10.	

Details of current debt of householder: (including insurance policies and credit purchases)	
1. Institution	
Account number	
Amount owing	

3. Institution
Account number
Amount owing
5. Institution
Account number
Amount owing
Details in respect of legal or other actions taken against me in respect of current expenses/ debt of the household: (i.e. administration orders, sequestration, other court orders, listed with a credit agency, etc.)
1. Institution
Type of action
Case number
Amount owing
3. Institution
Case number
Type of action
Amount owing
5. Institution
Type of action
Case number
Amount owing
The following document must be attached –
1. documentary proof of income (such as a letter from the customer's employer, a salary advice, a pension card, unemployment fund card, etc.)

2. an affidavit declaring unemployment or income; and
3. Latest municipal account in the possession of customer; and
4. A certified copy of applicant's identity document.

A. I hereby –

1. Apply for registration as an indigent customer for a period of one year;
2. Accept the conditions applicable to this application as set out the municipality's policy, by-laws and condition of supply of any service provider of the municipality;
3. Declare that I was informed that the documents referred to (2) are available for inspection of the office of the municipality during office hours;
4. Declare that this application form and implication thereof was explained to me;
5. Declare that all payments due and payable by me in pursuance of this application shall promptly be paid by me on the due date; and
6. Declare that the information provided in this application form is true and correct.

B. I further declare and accept that the following specific conditions shall apply to this application –

1. The municipality or its authorized agent may send authorized representatives to premises or household applying for registration as an indigent customer to conduct an on-site audit of information provided prior to approval of application or any time thereafter.
2. An application shall be approved for a period of 12 months only.
3. the municipality or its authorized agent may on approval of an application or any time thereafter –
 - 3.1 install a pre-payment electricity meter for the indigent customer where electricity is provided by the municipality or its authorized agent; and
 - 3.2 limit the water supply services of an indigent customer to a basic supply of not less than 6(six) kilolitres per month.
4. an indigent customer may annually re-apply for registration as an indigent customer, failing which he assistance will cease automatically
5. The municipality or its authorized agent gives no guarantee of renewal.

6. the municipal council may annually as part of its budgetary process determine the municipal services and levels thereof that will be subsidized in respect of indigent customers in accordance with national policy, but subject to principle of sustainability and affordability.
7. any other municipal services rendered by the municipality or its authorized agent or municipal services consumed in excess of the quantities specified in 6 above shall be charged for and the indigent customer shall be liable for the payment of such charges levied on the excess consumption . Normal credit control procedures shall apply in respect of such excess consumption.
8. Arrears accumulated in respect of the municipal accounts of customers prior to registration as indigent customers will be suspended, without interest accumulating in respect of such arrears, for the period that a customer remains registered an indigent customer.
9. Suspended arrears shall become due and payable by the customer in monthly instalments as determined by the municipality or its authorized agent, or de-registration.
10. Arrears suspended for a period of 2(two) to years of longer shall not be recovered from a customer on the de-registration.
11. the municipality or its authorized agent may undertake regular random audits to –
 - 11.1 verify the information provided by indigent customers;
 - 11.2 record any change in the circumstances of indigent customer; and
 - 11.3 make recommendations on the de-registration of the indigent customer.
12. any customer who provide or provided false information in the application form and/ or any other documentation and information in connection with the application –
 - 12.1 shall automatically, without notice be de-registered as an indigent customer from the date on which the municipality or its authorized agent become aware that such information is false; and
 - 12.2 shall be held liable for the payment of all services received;
 - 12.3 in addition to any other legal actions the municipality or its authorized agent may take

against such a customer.

13. an indigent customer must immediately request deregistration by the municipality or its authorized agent if him or her circumstances has changed to the extent that he or she no longer meets the qualifications set out in the by-laws.
14. an indigent customer shall automatically be de-registered in an annually application is not made or if such application is not approved.
15. an indigent customer shall automatically be de-registered if an audit or verification concludes that the financial circumstances of the indigent customer has changed to the extent that he/she no longer meet qualifications set out in the by-laws.
16. an indigent customer may at any time request de-registration.

Applicant

Municipality/ authorized agent

Date

Date

CERTIFICATION BY MUNICIPALITY

The consequences of the above declaration made by the applicant were explained to him/her and he/she indicated that the contents of the APPLICATION were understood.

Municipality/ authorized agent

Date

FOR OFFICE USE ONLY

Account number

Date of receipt application

First verification

Date

Site visit (yes/no)

Name of verifier		
Indicated information not Verified		
Recommendation		
APPLICATION APPROVED/ NOT APPROVED		
Second verification		
Date		
Site visit (yes/no)		
Name of verifier		
Designation of verifier		